

SUMMARY

AT&T's Petition to Deny should be dismissed. The Petition presents the remarkable spectacle of AT&T – the beneficiary of structural competitive advantages for decades and the recent recipient of massive amounts of prime 3.45 GHz and C-band spectrum – asserting that T-Mobile's minor spectrum overages resulting from Auction 108 constitute a competitive harm. Strikingly, the Petition does not provide a single fact to support its claims that T-Mobile's participation in the 2.5 GHz auction is part of an anticompetitive foreclosure strategy to raise AT&T's costs. Nor could it, since AT&T elected not to place even one bid in this auction. The Petition absurdly boils down to a claim that T-Mobile paid too little for spectrum as part of a plan to make AT&T pay too much. There is no plausible foreclosure strategy at work in an auction where the total amount of T-Mobile's winning bids is small in scale (\$304 million) compared to the rival's investment plans (\$24 billion in 2022), and AT&T sat out the auction.

While masquerading as an effort to protect competition, the Petition is plainly a calculated attempt to impede competition. AT&T has not and cannot claim an inability to acquire spectrum necessary to compete. To the contrary, its Petition acknowledges that all other carriers have access to sufficient spectrum and its public pronouncements proclaim that AT&T has a competitive superiority. In this context, the Petition's real purpose is to delay T-Mobile from making use of idle 2.5 GHz spectrum to deploy important new 5G broadband services, particularly in rural areas, to compete more aggressively against AT&T. This includes T-Mobile's Home Internet service, which relies on 5G spectrum capacity to bring competition and choice in broadband service providers to consumers generally stuck with just one wired option, such as AT&T. The Commission should recognize the Petition for what it is and promptly reject AT&T's request.

The Petition is legally flawed as well. AT&T is effectively asking the Commission to rewrite the auction rules after the auction has concluded. However, the time for AT&T to seek reconsideration of the Auction 108 rules has long passed. AT&T petitions to deny T-Mobile's application, but it lacks standing to do so given its failure to submit even one bid in the auction. It additionally bears noting that the Commission has never previously imposed a post-auction spectrum aggregation limit, and there is absolutely no basis for the Commission to depart from that consistent policy here.

For the reasons summarized above and detailed below, the public interest will be served by dismissal or denial of the Petition and prompt grant of the above-captioned application.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)
) ULS File No. 0010206629
T-Mobile License LLC)

OPPOSITION OF T-MOBILE USA, INC. TO AT&T PETITION TO DENY

T-Mobile License LLC (“T-Mobile”) hereby respectfully submits this Opposition to the Petition to Deny of AT&T Services, Inc. (“AT&T”) with respect to the above-captioned license application.¹ AT&T offers no facts to support its claims of competitive harm concerning a spectrum auction in which it chose not to compete. To the contrary, the record shows AT&T is not interested in this spectrum and has sufficient mid-band spectrum to fulfill its needs. Further, AT&T’s request to rewrite the rules for this auction after the fact are legally foreclosed and AT&T lacks standing to file a petition to deny the application in any event. The Petition is simply an effort to misuse FCC processes to delay T-Mobile from deploying idle 2.5 GHz spectrum to deliver improved 5G broadband and its important new Home Internet service, particularly in rural areas, where T-Mobile is competing more aggressively than ever against AT&T. The Commission should recognize the Petition for what it is (*i.e.*, an attempt to delay or prevent more effective competition) and promptly dismiss or deny it.

¹ Petition to Deny of AT&T Services, Inc., ULS File No. 0010206629 (Nov. 9, 2022) (the “AT&T Petition” or “Petition”).

I. AT&T’S CLAIM THAT T-MOBILE IS ENGAGED IN ANTICOMPETITIVE CONDUCT HAS NO FACTUAL OR LEGAL BASIS

AT&T alleges that T-Mobile has engaged in an anticompetitive strategy to raise its rival’s costs and harm consumers through undue spectrum aggregation. Its Petition, however, does not show any basis for its claims that T-Mobile’s participation in Auction 108 is part of a plan to raise AT&T’s costs or deny AT&T access to spectrum necessary to compete. As detailed below, AT&T has itself acknowledged that it has access to the spectrum it needs to compete. It is also crystal clear from the record that AT&T elected not to participate in the 2.5 GHz auction for its own business reasons and not as the result of any foreclosure strategy.

A. AT&T Cannot Rationally Argue That T-Mobile’s Participation in the 2.5 GHz Auction is Foreclosing AT&T from Acquiring Mid-Band Spectrum or Somehow Raising its Costs

AT&T’s claims that T-Mobile acquired 2.5 GHz at a severe discount compared to other auctions while simultaneously foreclosing competitors from acquiring mid-band (which includes 2.5 GHz spectrum) are inherently contradictory.² First of all, AT&T cannot plausibly claim that it has been foreclosed by T-Mobile from acquiring mid-band spectrum in an auction where it never participated. AT&T submitted an upfront payment of only \$1,000 and failed to tender a single bid. AT&T now complains that spectrum in Auction 108 was sold for “orders of magnitude below the bid levels in prior, competitively neutral auctions.”³ Yet, faced with the opportunity to acquire – or at least bid for – spectrum it now claims sold below market value for mid-band spectrum, AT&T declined entirely to do so.⁴ In fact, T-Mobile was the only bidder for

² *Id.* at 5-10.

³ *Id.* at 3.

⁴ AT&T takes the position that only T-Mobile could be an efficient user of the spectrum at issue in Auction 108 (*see* AT&T Petition at 10), but that – contrary to the public interest – the Commission should take action that deprives T-Mobile of the ability to use its existing assets

over half of the licenses it won and other licenses went unsold entirely. Nor is this the only mid-band spectrum auction where AT&T declined to acquire spectrum; AT&T submitted an upfront payment of \$1,000 and tendered no bids in Auction 105, despite 70 megahertz of mid-band spectrum made available in that auction.

When AT&T has decided to participate in an auction, there is no evidence of its inability to be a successful bidder. A review of the outcomes of the last five mid-band auctions demonstrates that AT&T obtained more than twice the amount of newly attributable mid-band spectrum (Figure 1) and outspent T-Mobile by three and a half times (Figure 2). AT&T's foreclosure claim with respect to mid-band spectrum – which forms the core of its argument – should be rejected out of hand.⁵

more efficiently and become a stronger competitor. It is true that T-Mobile will be able to use the spectrum very efficiently to fill out gaps in its coverage and put the spectrum to use in the immediate term – that would seem to support a finding that grant of the spectrum is in the public interest, will increase competition in the market, and enhance service in the markets at issue. It is also true that T-Mobile was not the only entity to see the promise of the 2.5 GHz spectrum being auctioned – out of 82 qualified bidders, 63 bidders (77%) were successful at winning licenses.

⁵ AT&T also entirely overlooks 20 megahertz of mid-band WCS A and B block spectrum that it has deployed as Band 30 LTE and could use to deploy Band n30 5G. *See, e.g., Benefits of the AT&T 4G LTE Network*, AT&T, <https://www.att.com/support/article/wireless/KM1008740/> (last update July 7, 2021) (describing WCS as one of a “variety of technologies and frequencies used to support” AT&T’s network).

Added Attributable Mid-Band
(MHz, POP-weighted nationwide)

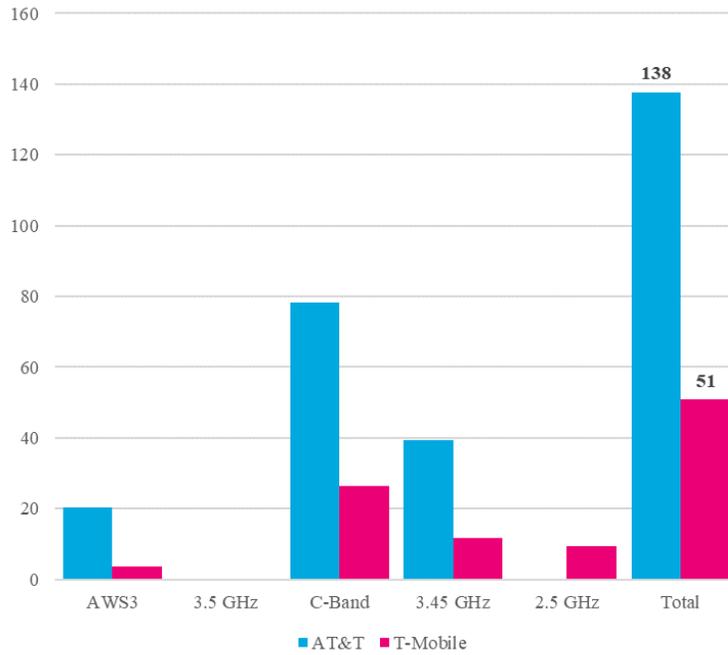


Figure 1

Mid-Band Auction Spending
(x \$1 Billion)

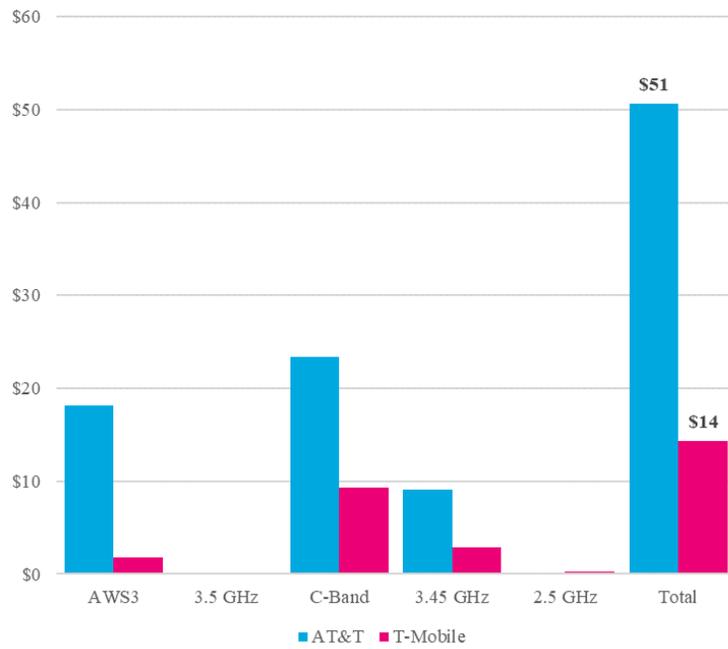


Figure 2

Finally, a claim that a company has acted to raise a rival's costs requires demonstration of specific facts showing actual foreclosure that has an anticompetitive effect. AT&T has not and cannot offer any such showing. After all, if foreclosure were the strategy, one would expect the foreclosing party: (i) to try to minimize the amount of available C-band spectrum; (ii) to acquire early-release, Phase I C-Band spectrum, not the late-release frequencies; and (iii) to acquire maximum permissible 3.45 GHz spectrum. None of these events occurred and, indeed, T-Mobile pursued the opposite strategy in each case by seeking to maximize the amount of available C-band spectrum,⁶ securing late-release C-band frequencies,⁷ and acquiring 3.45 GHz spectrum in an amount well under the band-specific limit adopted by the Commission.⁸ Furthermore, T-Mobile's participation in an open bidding process in which AT&T chose not to bid cannot possibly qualify as an effort to raise a rival's costs under any applicable law, and AT&T does not cite a single legal precedent that suggests otherwise. The Petition, on the other hand, appears designed to thwart competition by imposing unnecessary costs on T-Mobile and seeking to delay the pro-consumer benefits yet to come from T-Mobile's 5G network.

⁶ See, e.g., Comments of T-Mobile USA, Inc., GN Docket No. 18-122, at 7 (Oct. 29, 2018) (“The first phase of the T-Mobile market plan would be a forward auction for licenses for all 500 megahertz of spectrum in each geographic area.”).

⁷ See *Auction of Flexible-Use Service Licenses in the 3.7-3.98 GHz Band Closes*, Public Notice, AU Docket No. 20-25, at Attachment A (OEA & WTB, rel. Feb. 24, 2021); Federal Communications Commission, Public Reporting System, Auction 107 - 3.7 GHz (last visited Nov. 13, 2022), <https://auctiondata.fcc.gov/public/projects/auction107>.

⁸ See *Auction of Flexible-Use Service Licenses in the 3.45-3.55 GHz Band Closes*, Public Notice, AU Docket No. 21-62, at Attachment A (OEA & WTB, rel. Jan. 14, 2022); Federal Communications Commission, Public Reporting System, Auction 110 – 3.45 GHz (last visited Nov. 13, 2022), <https://auctiondata.fcc.gov/public/projects/auction110>.

B. AT&T’s Foreclosure Claims Fly in the Face of its Public Pronouncements of Possessing a Superior Competitive Position and its Admission in the Petition of Having the Spectrum Assets Needed to Compete

AT&T does not suffer (nor has it ever suffered) from a lack of access to spectrum – including mid-band spectrum. This is evidenced by AT&T’s own statements highlighting its spectrum holdings and network performance and coverage. After Auction 107, AT&T Chief Financial Officer John Stephens highlighted AT&T’s spectrum holdings, stating “we’ve added significant amounts of spectrum, whether it’s through Leap or AWS-3 or other spectrum acquisitions, the C-band, the millimeter wave . . . we’ve dramatically improved our networks and our capabilities and our throughput.” He added that AT&T had the “the fastest network out there” for 8 straight quarters.⁹ More recently, and particularly germane considering AT&T’s focus on mid-band spectrum, CEO John Stankey declared that AT&T has “achieved our already increased year-end target of 100 million mid-band 5G POPs and now expect[s] to reach more than 130 million people by the end of the year, nearly double our expectations when we entered the year” and that “download speeds have increased materially as a result of our mid-band deployment.”¹⁰

AT&T even concedes in its Petition that all major wireless providers “have the spectrum assets they need to compete in the near term.”¹¹ In rejecting a similar AT&T challenge to a T-

⁹ AT&T Investor Relations, *AT&T Inc. at Deutsche Bank Virtual Media, Internet and Telecom Conference* (Mar. 8, 2021), <https://investors.att.com/~media/Files/A/ATT-IR-V2/events-and-presentations/Final%20Deutsche%20Bank%20transcript%203821.pdf>.

¹⁰ AT&T Investor Relations, *Q3 2022 AT&T Inc. Earnings Call* (Oct. 20, 2022), <https://investors.att.com/~media/Files/A/ATT-IR-V2/financial-reports/quarterly-earnings/2022/3Q22/t-usq-transcript-2022-10-20.pdf>.

¹¹ AT&T Petition at 13. AT&T also previously opposed the kind of band-specific aggregation limit it proposes here – stating that such efforts were “nothing more than a pretense for limiting the ability of AT&T . . . to compete.” *See In the Matter of Policies Regarding Mobile Spectrum Holdings*, Reply Comments of AT&T Inc., WT Docket No. 12-269, 37 (Jan. 7, 2013). AT&T

Mobile spectrum acquisition less than two years ago, the Wireless Telecommunications Bureau (“WTB”) concluded that competitors’ substantial existing spectrum holdings and the Commission’s ongoing efforts to increase the total supply of spectrum for mobile broadband made it unlikely that an incremental additional aggregation of spectrum by T-Mobile would raise rivals’ costs or foreclose entry into the market.¹² Here, the small amount of incremental spectrum increases due to the spectrum T-Mobile won in Auction 108 cannot justify a different conclusion.

C. AT&T Has Not Shown that 2.5 GHz Spectrum Is Essential to Its Deployment Plans or that It Lacks Spectrum Necessary to Meet its Needs

In rejecting a challenge to a prior T-Mobile acquisition of spectrum less than two years ago, the WTB held that “AT&T and Verizon have not established that this spectrum is essential to their deployment plans or that they lack the spectrum necessary to meet their current needs.”¹³ Here, AT&T has failed on both counts again. Declining to participate in auctions or acquire spectrum on the open market is not evidence of foreclosure; it merely reflects differentiated use and valuation of the spectrum at issue. As AT&T once explained, the fact that it might outbid T-

also characterized efforts to tip the competitive scales in favor of specific competitors as “unlawful” and noted that courts have held that the Commission may not “subordinate the public interest to the interest of equalizing competition among competitors.” *See* Letter from Wayne Watts, Senior Executive Vice President and General Counsel, AT&T Inc. to Chairman Julius Genachowski, Federal Communications Commission, WT Docket No. 12-269, at 3-4 (Apr. 24, 2013) (“AT&T 2013 Letter”), citing *SBC Commc’ns v. FCC*, 56 F.3d 1484, 1491 (D.C. Cir. 1995); *see also W. Union Tel. Co. v. FCC*, 665 F.2d 1112, 1122 (D.C. Cir. 1981) (“equalization of competition is not itself a sufficient basis for Commission action”).

¹² *See Application of T-Mobile License LLC and Channel 51 License Company LLC for Spectrum Manager Lease Arrangement; Application of T-Mobile License LLC and LB License Co, LLC for Spectrum Manager Lease Arrangement*, Order on Reconsideration, ULS File Nos. 0009021213, 0009021220, 35 FCC Rcd 14059, 14065-66, ¶¶ 11, 13 (Dec. 3, 2020) (“Channel 51/LB Lease Order on Reconsideration”).

¹³ *Id.* at ¶ 19.

Mobile for spectrum “is not evidence of foreclosure, but only that AT&T believes it can put that spectrum to a higher-valued use than T-Mobile. . . . It is T-Mobile’s business strategy, not AT&T, that is ‘foreclosing’ T-Mobile from expanding its network footprint.”¹⁴ The fact that AT&T believes that *T-Mobile* can put that spectrum to higher value use than *AT&T* likely explains AT&T’s behavior in Auction 108.

Plainly, AT&T possesses significant financial resources to acquire spectrum when it wants to:¹⁵

- AT&T forecast making \$24 billion in capital investments this year with \$14 billion in free cash flow.¹⁶
- In Auction 107, beginning in late 2020 and concluding in 2021, AT&T and Verizon split all of the interim spectrum available in the near term, and AT&T and Verizon

¹⁴ See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Opposition of AT&T to Petitions for Reconsideration of T-Mobile and CCA, GN Docket No. 12-268, 11, n.28 (Nov. 12, 2014).

¹⁵ AT&T also accuses T-Mobile of acquiring its spectrum “not because it outbid others at auction, but because it purchased Sprint, which for years had accumulated massive interests . . . outside of any auction context.” See AT&T Petition at 6. If AT&T’s position is that acquiring spectrum through secondary market transactions outside the auction process does not serve the public interest, that is ironic, as AT&T: (i) was formed through mergers and acquisitions of many mobile telecommunications licensees, including Southwestern Bell Corporation, Pacific Telesis Group, Ameritech Corporation, BellSouth Corporation/Cingular Wireless, AT&T Wireless, Leap Wireless International (Cricket), and FiberTower Corporation, among others; (ii) holds substantial spectrum awarded outside of the auction context and without any public remuneration, including nearly half of the 800 MHz cellular band and excess capacity from the FirstNet network; and (iii) recently concluded a lease with DISH Corporation involving access to potentially 70 megahertz of mid-band spectrum.

¹⁶ See AT&T Investor Relations, *Q3 2022 AT&T Inc. Earnings Call* (Oct. 20, 2022), <https://investors.att.com/~media/Files/A/ATT-IR-V2/financial-reports/quarterly-earnings/2022/3Q22/t-usq-transcript-2022-10-20.pdf>. AT&T also possesses significant fiber assets which it has characterized as just as important – if not more important – as spectrum in delivering a superior customer experience, stating “[y]ou’ll hear our competitors tout their 5G, but none of them have the fiber footprint we do – or plans to build one.” See Chris Sambar, *Introduction of C-Band Spectrum: A Connectivity Building Block*, AT&T Blog (Jan. 19, 2022), <https://about.att.com/innovationblog/2022/connectivity.html>.

dominated the auction overall.¹⁷ AT&T paid \$23.4 billion as compared to T-Mobile spending \$9.3 billion to win more than ten times as many licenses (1,621 vs. 142) and acquire nearly 80 megahertz of prime mid-band spectrum (compared to T-Mobile's 26.8 megahertz) on an average national, pop-weighted basis.¹⁸

- In Auction 110, beginning in 2021 and concluding in early 2022, AT&T spent nearly \$9.1 billion (compared to T-Mobile's \$2.9 billion) to acquire 1,624 licenses and 40 megahertz of nearly nationwide coverage in the 3.45 GHz band.¹⁹
- Finally, in lieu of purchasing spectrum and investing in its network, AT&T paid \$49 billion to purchase DirectTV and \$85 billion to purchase Time Warner, more than the sum total of all of AT&T's spectrum purchases.²⁰

In addition, last year AT&T increased its mid-band spectrum holdings by nearly 70 megahertz via a Network Services Agreement entered into with DISH Network Corporation.²¹ While AT&T fails to describe or even disclose the extent to which it can access DISH's extensive mid-band spectrum, if the Network Services Agreement between DISH and AT&T has any real meaning, AT&T's useable mid-band spectrum would surpass Verizon's and T-Mobile's.²²

¹⁷ See Auction of Flexible-Use Service Licenses in the 3.7-3.98 GHz Band Closes; Winning Bidders Announced for Auction 107, *Public Notice*, 36 FCC Rcd 4318 (WTB/OEA 2021).

¹⁸ *Id.*

¹⁹ See Auction of Flexible-Use Service Licenses in the 3.45-3.55 GHz Band Closes; Winning Bidders Announced for Auction 110, *Public Notice*, DA 22-39 (WTB/OEA 2022).

²⁰ See AT&T, *AT&T Completes Acquisition of DirectTV* (July 24, 2015), https://about.att.com/story/att_completes_acquisition_of_directtv.html; see also AT&T, *AT&T Completes Acquisition of Time Warner Inc.* (June 15, 2018), https://about.att.com/story/att_completes_acquisition_of_time_warner_inc.html#:~:text=Under%20the%20terms%20of%20the,share%20of%20Time%20Warner%20Inc.&text=As%20a%20result%20of%20AT%20T%20issued,%24180.4B%20in%20net%20debt.

²¹ See Press Release, DISH, DISH and AT&T Sign Strategic Network Services Agreement (July 19, 2021), <https://about.dish.com/2021-07-19-DISH-and-AT-T-Sign-Strategic-Network-Services-Agreement>.

²² If AT&T's lease with DISH is included, which is estimated to include 70 megahertz of mid-band spectrum, AT&T's acquisition of mid-band spectrum since the AWS-3 auction would be 208 megahertz on a national, POP-weighted basis, as compared to 51 megahertz for T-Mobile.

In the Petition, AT&T downplays its own spectrum holdings and overstates the amount of mid-band spectrum held by T-Mobile, particularly with respect to the impact of Auction 108. However, the facts make clear that the effect of Auction 108 on mid-band spectrum concentration would be minimal.²³ The additional mid-band spectrum MHz-POPS attributable to T-Mobile as a result of the auction constitutes just 2.6% of T-Mobile’s total attributable MHz-POPs – underscoring the minimal impact of the auction on mid-band spectrum share.

II. AT&T LACKS STANDING AND ITS PETITION TO DENY SEEKS UNTIMELY AND PROCEDURALLY IMPROPER REVIEW OF PAST COMMISSION DECISIONS

To establish standing as a party in interest, a petitioner must demonstrate that grant of the application would cause the petitioner to suffer a direct injury, a causal link between the claimed injury and the challenged action, and show the relief requested would address the injury.²⁴ Courts and the Commission have repeatedly held that, to establish standing to file a petition to deny an auction application, the petitioner must have participated in the auction itself,²⁵ been able and ready to bid on the relevant license,²⁶ and establish that the decision of the Commission

²³ It is also worth noting that T-Mobile’s Auction 108 winnings do not overlap with its Auction 107 or Auction 110 winnings.

²⁴ 47 C.F.R. §1.939(d); 47 U.S.C. 309(d)(1); *see also In re Northstar Wireless, LLC*, Memorandum Opinion and Order, 30 FCC Rcd 8887, 8904 ¶ 39 (2015) (citing *In re Petition for Reconsideration of Various Auction 87 Public Notices*, Memorandum Opinion and Order, 27 FCC Rcd 4374, 4382 ¶ 21 (WTB 2012)).

²⁵ *See In Re Ameer X Flippin*, 20 FCC Rcd 8915, 8916 (WTB 2005) (“The Commission has repeatedly held that, to establish standing to file a petition to deny in an auction application, the petitioner must have participated in the auction itself.”); *High Plains Wireless v. FCC*, 273 F.3d 599, 605 (D.C. Cir. 2002) (ruling that an entity that was not qualified to bid in a particular market in an auction does not have standing to file a petition to deny a winning bidder’s application in that market).

²⁶ *See, e.g., High Plains Wireless, L.P. v. FCC*, 276 F.3d 599, 605 (D.C. Cir. 2002) (“*High Plains*”) (petitioner that alleged that applicant engaged in general anti-competitive bidding strategies, denying the petitioner a “legally valid procurement process,” had standing to

prevented it from doing so on an equal basis.²⁷ However, here AT&T had the chance to participate in the auction, submitted no bids, and faced no Commission prohibition on its participation.²⁸ AT&T thus could have suffered no injury. Consistent with Commission precedent, AT&T clearly lacks standing to challenge grant of the licenses at issue. The Petition should be promptly dismissed on this basis alone.

AT&T's Petition is also legally deficient for another reason. A petition to deny must "contain specific allegations of fact sufficient to show that the petitioner is a party in interest"²⁹ by "demonstrate[ing] that grant of the subject application would cause [it] to suffer a *direct injury*."³⁰ Yet, AT&T's petition does not assert any specific injury that would be caused by grant of T-Mobile's Auction 108 application. Rather, the alleged harms all appear to stem from past Commission actions in other proceedings. AT&T complains that "a Commission majority rejected proposals by AT&T and others" in various rulemaking settings.³¹

challenge the grant of licenses to applicant in only the one market in which petitioner had also submitted a bid); *see also See In the Matter of Alaska Native Wireless, L.L.C.*, Order, 17 FCC Rcd 4231 ¶ 9 (WTB 2002) (in evaluating standing, the FCC will take into consideration other auction participants who also outbid petitioner) *app. for review denied*, Order, 18 FCC Rcd 11640 ¶ 10-13 (2003) (petitioner that participated in an auction but did not bid on certain market licenses lacked standing to challenge the grant of those licenses because it could not show that any injury would be redressed by denial of the grant); *see also In re Petition for Reconsideration of Various Auction 87 Public Notices*, 27 FCC Rcd 4374, 4384-85, ¶ 27 (WTB 2012) (petitioner "suffered no ... injury, having placed no bid on the same licenses on which [the applicants'] bid").

²⁷ *See High Plains*, 276 F.3d at 605.

²⁸ To the extent that AT&T asserts that the Commission's decisions regarding the auction's structure somehow placed it at an unfair advantage, those claims constitute untimely requests for reconsideration. *See infra* n.32.

²⁹ 47 U.S.C. § 309(d)(1).

³⁰ *Alaska Native Wireless, LLC*, Order, 17 FCC Rcd 4231, 4235, ¶ 8 (WTB 2002) (emphasis added); *see also Alaska Native Wireless, LLC*, 18 FCC Rcd 11640, 11644-45, ¶ 10 (2003).

³¹ AT&T Petition at 10.

AT&T seems to want to rehash past auctions and past Commission decisions where it was displeased with the outcomes. However, those “alleged harms” relate to other proceedings in which AT&T failed to advance timely challenges and which it is legally foreclosed from challenging now.³² AT&T also complains that the Commission has not acted on a Petition for Rulemaking it filed over a year ago.³³ But a license application is legally required to be processed under the adopted rules in effect; an unprocessed and unadopted proposal for new rules is irrelevant. For these reasons, the Petition should be promptly dismissed or denied for failure to allege a direct injury to the petitioner resulting from the grant of T-Mobile’s application.

III. AT&T’S PETITION TO DENY LACKS ANY FACTUAL ALLEGATIONS OF HARM AND RESORTS INSTEAD TO TREATING THE SPECTRUM SCREEN AS A CAP

A. AT&T Has Made No Factual Showing Demonstrating Competitive Harm

The Petition is totally devoid of any factual allegations of competitive harm. Tellingly, AT&T has not bothered to include with the Petition any declaration attesting to asserted facts – because there are none. Instead, AT&T argues that the spectrum screen overages caused by

³² The Commission has treated filings as untimely filed petitions for reconsideration where the filer raises issues the Commission has previously considered and addressed in a proceeding for which the deadline to seek reconsideration has passed. *See, e.g., In the Matter of Motions for Declaratory Rulings Regarding Commission Rules and Policies For Frequency Coordination in the Private Land Mobile Radio Services*, 14 FCC Rcd. 12752, 12757 (1999) (“*Private Land Mobile Radio Services*”); *Improving Public Safety Communications in the 800 MHz Band*, 26 FCC Rcd. 2035, 2036-37 (PSHSB 2011) (“The Petition, although captioned a petition for declaratory ruling is, in substance, an untimely petition for reconsideration.”). Here, AT&T is effectively seeking reconsideration of the Commission’s previous decisions to grant T-Mobile’s applications for spectrum licenses, specifically the T-Mobile/Sprint merger, Auction 107, and Auction 110. The timeframe for seeking reconsideration of those actions has long since passed and the Commission should decline to consider any arguments seeking a reconsideration of their grant. *See* 47 CFR § 1.429(d) (requiring that petitions for reconsideration “be filed within 30 days from the date of public notice of such action”).

³³ AT&T Petition at 4.

granting T-Mobile’s application are somehow a *de facto* harm to AT&T. However, the FCC has long been clear that the spectrum screen is a processing screen and not a cap and that merely exceeding the screen does not constitute competitive harm.³⁴

Specifically, the Petition argues that T-Mobile “already exceeds the screen in one or more counties within 181 Cellular Market Areas (‘CMAs’)” and that “a grant of the licenses won in Auction 108 would cause T-Mobile to exceed (or further exceed) the screen in one or more counties within 70 CMAs.”³⁵ Yet, as AT&T itself recognizes, “[t]he Commission has a long-standing analytical framework” for conducting reviews in instances where proposed holdings trigger the spectrum screen.³⁶ Under that framework, exceeding the screen merely triggers the review; it most certainly does not “require[] [the Commission to] withhold issuance of any additional mid-band licenses to T-Mobile,”³⁷ nor does it require the Commission to “condition its grant on T-Mobile’s divestiture of sufficient mid-band spectrum.”³⁸

Knowing that T-Mobile’s increased spectrum holdings as a result of this application will be purely incremental – mostly *de minimis* or in rural areas – and unlikely to result in competitive harm, the Petition tries instead to create a new, illogical definition of mid-band that excludes bands like AWS, PCS, and WCS, all of which are used or plan to be used for 5G

³⁴ See Channel 51/LB Lease Order on Reconsideration, 35 FCC Rcd at 14067, ¶ 4 (“[W]e emphasize that the Commission’s spectrum screen is not a hard cap on a company’s holdings but instead is simply a threshold for further competitive analysis.”); see also *Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6133, 6229-31, ¶¶ 252-58 (2014) (“Mobile Spectrum Holdings Order”).

³⁵ AT&T Petition at 12.

³⁶ *Id.* at 11.

³⁷ *Id.* at 4.

³⁸ *Id.* at 3.

services. The Petition also tries to characterize T-Mobile’s pre-auction holdings as somehow damning – even though T-Mobile’s existing spectrum holdings were explicitly reviewed and approved by the Commission (and, in the case of the T-Mobile/Sprint merger, also by the Department of Justice’s Antitrust Division).³⁹ This spectrum has been put to use rapidly to roll out 5G services nationwide, to the benefit of consumers and the public interest. In short, AT&T’s arguments are specious and the Petition provides no factual demonstration whatsoever of any competitive harm from the grant of T-Mobile’s application.

The Bureau previously determined that petitions lacking any sort of specified showing of actual competitive harm do not provide sufficient cause for denial of an application.⁴⁰ Specifically, in a similar challenge to a T-Mobile spectrum acquisition, opponents merely cited to T-Mobile exceeding the spectrum screen as inherently anticompetitive. The Bureau rightly noted that exceeding the screen is not indicative of competitive harm and that the opponents had failed to articulate any specified competitive harm resulting from grant.⁴¹ The instant Petition is similarly deficient, and the Commission should therefore reach the same conclusion and dismiss or deny the Petition.

³⁹ While T-Mobile has gained incremental amounts of spectrum by virtue of transactions after the Sprint merger review, all of these transactions were reviewed and approved by the Commission on competitive and other public interest grounds despite opposition in the same vein as the instant Petition in some cases. Notably, AT&T did not object to a substantial spectrum swap between AT&T and T-Mobile that resulted in T-Mobile license holdings in some markets that were nominally above the screen. *See* ULS File No. 0010082447.

⁴⁰ Channel 51/LB Lease Order on Reconsideration, 35 FCC Rcd at 14067, ¶ 18.

⁴¹ *See id.* at ¶ 18 (“Here, even though the leasing arrangements further increase T-Mobile’s holdings above the screen trigger, Verizon and AT&T have failed to identify any particular competitive harm. Indeed, in the Mobile Spectrum Holdings Report and Order, the Commission considered and rejected a rebuttable presumption that a transaction that triggers the spectrum screen is presumed not in the public interest.”).

B. T-Mobile’s Acquisition of Spectrum in the 2.5 GHz Band is Minor and Incremental

A review of the minor spectrum screen overages resulting from the spectrum T-Mobile won in Auction 108 makes clear that no harm would ensue from granting the application – and certainly no harm that would outweigh the substantial public interest benefits that would result from enabling T-Mobile to put the spectrum to use immediately. In the auction, T-Mobile won spectrum in 2,724 counties. In the vast majority (83%) of those counties, T-Mobile’s post-grant holdings would not exceed the screen. There are only 67 counties where T-Mobile would newly exceed the screen (setting aside counties where T-Mobile’s attributable spectrum did not increase and where the company was previously approved to exceed the screen). This screen overage amounts to only 0.28% of T-Mobile’s total spectrum holdings on a pop-weighted basis in the CMAs where T-Mobile won licenses and exceeds the screen.⁴²

In prior cases of spectrum screen overages, including numerous past instances involving AT&T that were much larger on a relative basis, the Commission has granted the applications without a finding of competitive harm.⁴³ As the Bureau concluded in a recent case approving spectrum leases that would create new overages above the spectrum screen for T-Mobile:

⁴² See ULS File No. 0010206629, Amended and Restated Mobile Spectrum Holdings (Nov. 7, 2022). 0.26% represents the MHz-POPs by which T-Mobile is exceeds the screen as a result of Auction 108, divided by the total attributable MHz-POPs in the CMAs where T-Mobile acquired licenses in Auction 108 and exceeds the screen.

⁴³ See, e.g., *AT&T Mobility Spectrum LLC and West Carolina Communications, LLC*, 31 FCC Rcd 8664 (WTB 2016); see also *AT&T Mobility Spectrum LLC and Data-Max Wireless, LLC*, 31 FCC Rcd 12662 (WTB 2016); see also *AT&T Inc. and United States Cellular Corporation*, 32 FCC Rcd 52 (2016). In all of these instances, AT&T exceeded the applicable spectrum screen by approximately 22%. Here, T-Mobile exceeds the screen by an irrelevant fraction of the total MHz on a pop-weighted basis in markets where it won licenses in Auction 108. In other instances, the Commission has allowed screen overages where the spectrum at issue was previously fallow, including one prominent case involving AT&T. See *AT&T Mobility Spectrum LLC and Club 42CM Limited Partnership*, 30 FCC Rcd 13055, 13076, ¶ 46 (2015) (“Further, we

Overall, given current spectrum holdings of rival service providers, including their holdings of millimeter-wave spectrum, as well as the spectrum coming online in the near future (not to mention the 1,245 megahertz of additional unlicensed mid-band spectrum the Commission has recently made available), we find it unlikely that rival service providers or potential entrants will be foreclosed from expanding capacity, deploying mobile broadband technologies, or entering the market, notwithstanding T-Mobile’s post-transaction attributable spectrum holdings under these leasing arrangements.⁴⁴

The same is true here.

C. Grant of the AT&T Petition Would Constitute a Significant Break with FCC Precedent and Undermine the Integrity of the Auction Process Generally

The Commission has never adopted a band-specific cap *after* an auction. Implementing a mid-band spectrum cap post-auction – as AT&T requests – would likely result in auction participants being uncertain whether, and to what degree, they should participate in future auctions. The Commission’s goal in implementing its spectrum holdings policies was to provide “greater certainty and efficiency in the process of licensing through competitive bidding.”⁴⁵ Grant of the Petition would undermine this bedrock principle and decrease participants’ trust in the auction process and the certainty that all winning bids will be addressed in the manner set forth in the adopting order. Pre-auction clarity is necessary to ensure full and fair participation. Grant of the Petition could decrease future auction participation or inhibit more zealous bidding, resulting in fewer bidders or lower bids – an outcome plainly contrary to the public interest. The Commission should therefore adhere to consistent precedent and decline to adopt post-auction constraints when there were no *ex ante* limits imposed.

note that this spectrum is currently lying fallow; its acquisition by AT&T will allow this spectrum in these particular markets to be put to use to the benefit of wireless consumers.”).

⁴⁴ Channel 51/LB Lease Order on Reconsideration, 35 FCC Rcd at 14065, ¶ 13.

⁴⁵ Mobile Spectrum Holdings Order, 29 FCC Rcd at 6192, ¶ 140.

IV. THE PUBLIC INTEREST WILL BE SERVED BY PROMPT DENIAL OF THE AT&T PETITION AND GRANT OF T-MOBILE'S APPLICATION

Grant of T-Mobile's application will serve the public interest by advancing important Commission objectives, such as the enhancement of competition and the deployment of next generation 5G services. Because of T-Mobile's existing 2.5 GHz holdings, the company is positioned to be able to make the best and highest use of 2.5 GHz spectrum it won at auction. The spectrum at issue here – which is currently lying fallow – would be rapidly utilized by T-Mobile to support the robust expansion of its 5G network and is ready to be deployed immediately at almost 11,000 sites. T-Mobile's 5G network is widely recognized as the industry's best.⁴⁶ T-Mobile's Extended Range covers 97% of Americans and its Ultra Capacity 5G covers 250 million Americans.⁴⁷

The 2.5 GHz spectrum T-Mobile won in Auction 108 is interspersed with existing 2.5 GHz spectrum T-Mobile has already deployed for mobile broadband. The new spectrum could thus be deployed quickly to fill gaps in the company's network coverage. The intermixture of this new and already operational spectrum would significantly and rapidly increase 5G mobile broadband capacity for consumers simply by allowing T-Mobile to expand the channel bandwidths that its previously deployed 5G equipment already supports.

T-Mobile additionally uses wireless capacity to support its fixed wireless in-home broadband offering ("Home Internet"), enhancing competition in the in-home broadband market, with a focus on targeting unserved and underserved areas. T-Mobile's Home Internet service is

⁴⁶ See, e.g., *T-Mobile's 5G Leadership Increases in Opensignal's Latest Study*, T-Mobile (Jan. 24, 2022), <https://www.t-mobile.com/news/network/t-mobiles-5g-leadership-increases-in-opensignals-latest-study>.

⁴⁷ T-Mobile Investor Relations, *T-Mobile Q3 2022 Earnings Call Investor Factbook* (Oct. 27, 2022), https://s29.q4cdn.com/310188824/files/doc_financials/2022/q3/TMUS-09_30_2022-EX-99.2-vFinal.pdf.

available to 40 million households today, a third of them in rural areas, and has over 2.1 million customers.⁴⁸ Home Internet is the fastest growing in-home broadband provider and its competitors have already taken note and began launching attack advertisements against Home Internet – the ultimate sign of respect.⁴⁹ T-Mobile expects to have over 7 million Home Internet subscribers by 2025.⁵⁰ This effort will help to close the Digital Divide for millions of households who have no service or no choice – including areas served only by AT&T, another reason AT&T may oppose grant here – by providing an affordable, high-speed offering. Sound spectrum policies are extremely important as T-Mobile’s ability to improve its Home Internet service and expand the households this service can support depends directly upon having sufficient spectrum to do so.

Simply stated, the spectrum that T-Mobile acquires (and needs going forward) will enable massive cost savings for consumers stuck today with no service or no choice for in-home broadband service. The Petition seeks to limit T-Mobile’s access to spectrum and inhibit its 5G deployment and comes at a time when rapid deployment of 5G spectrum is advantageous to

⁴⁸ *T-Mobile Delivers Industry-Leading Customer and Cash Flow Growth in Q3 2022 and Raises 2022 Guidance for the Third Consecutive Quarter* (Oct. 27, 2022), <https://www.t-mobile.com/news/business/t-mobile-q3-2022-earnings>.

⁴⁹ See T-Mobile, *T-Mobile 5G Home Internet Takes Over the Northeast* (Sept. 6, 2022), <https://www.t-mobile.com/news/network/t-mobile-5g-home-internet-takes-over-the-northeast>; see also Jeff Baumgartner, *Comcast Ad Campaign Takes Aim at T-Mobile’s FWA*, *Light Reading* (Oct. 17, 2022), <https://www.lightreading.com/broadband/comcast-ad-campaign-takes-aim-at-t-mobile-fwa-/d/d-id/781130>. Cox has also recently begun advertising against Home Internet. See Cox, *Cox Home Internet vs. 5G Home Internet* (2022), <https://www.cox.com/residential/internet/cox-internet-vs-5g-home-internet.html>.

⁵⁰ T-Mobile, *T-Mobile Smokes the Competition, Reaching 1 Million Fixed Wireless Customers Just a Year After Commercial Launch* (Apr. 20, 2022), <https://www.t-mobile.com/news/network/t-mobile-reaches-1-million-fixed-wireless-customers>.

supporting new and exciting use cases. Recognizing these benefits, the Commission should find that dismissing or denying the Petition and granting the application serves the public interest.

V. CONCLUSION

For the foregoing reasons, the Commission should dismiss or deny the AT&T Petition and promptly grant T-Mobile's above-captioned application. The Petition is fatally flawed as AT&T plainly lacks standing and fails to allege that it will suffer any direct harm from grant of T-Mobile's application. AT&T's effort to seek untimely reconsideration of past Commission actions is also unavailing. Clearly, the minor, incremental screen overages resulting from the spectrum T-Mobile won at auction raise no competitive concerns. The Commission should reject AT&T's thinly veiled attempt to delay T-Mobile in putting fallow spectrum to use and promptly grant the application so T-Mobile can rapidly deploy this spectrum to the benefit of consumers.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Peter Shroyer, certify that on this 14th day of November 2022, I have served* a copy of the foregoing Opposition on the following:

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* AT&T has consented to service by electronic mail